

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 163 of 1981
With
FIRST APPEAL No. 414 of 1981
With
FIRST APPEAL No. 375 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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MUNICIPAL CORPORATION - Appellant(s)
Versus
PRABHA HEMENDRA BHATT & 7 - Defendant(s)

Appearance :

MR MITUL K SHELAT for Appellant(s) : 1,
 MR PM RAVAL for Defendant(s) : 1 - 6.
 - for Defendant(s) : 7 - 8, 8.2.1,8.2.2

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/08/2006

COMMON ORAL JUDGMENT

1.As common question of law and facts arise between the same parties in all these three appeals, they are being disposed of by this common judgment and order.

2. All these appeals are filed by the Ahmedabad Municipal Corporation challenging the judgment and decrees passed by the learned City Civil Court, Ahmedabad, passed in Civil Suit Nos. 3693 of 1976, 3720 of 1976 and 3705 of 1976 in decreeing the said suits in favour of the defendants – respondent Nos. 1 to 6 herein.

3. The respondent Nos. 1 to 6 herein – original plaintiffs filed Civil Suit No. 3693 of 1976 in the City Civil Court, Ahmedabad, for recovery of Rs. 46,000/- with running interest at the rate of 9% from the date of the suit till realization from the suit immovable properties and if any amount still remains outstanding, from the person and other property of the original defendant Nos. 1 and 2 i.e. respondent Nos. 7 and 8 herein. Civil Suit No. 3720 of 1976 was filed by the respondent Nos. 1 to 6 herein for recovery of Rs. 35,000/- against all the defendants. Civil Suit No. 3705 of 1976 was filed by the respondent Nos. 1 to 6 herein for recovery of Rs. 35,000/- against all the defendants. It was the

contention on behalf of the original plaintiffs - respondent Nos.1 to 6 herein that the suit property was mortgaged by the original owners respondent Nos.7 and 8 herein for the aforesaid amount, for which, the suits came to be filed. However, the aforesaid property was put to auction by the Ahmedabad Municipal Corporation for the dues of the taxes and that warrant for attachment was issued and the Ahmedabad Municipal Corporation purchased the suit property for Rs.1/- on 5th May, 1977 as there were no bidders on the auction day and therefore, it was the contention on behalf of the plaintiffs that unless the mortgage amount is realized and paid to them, the property could not have been sold by the Ahmedabad Municipal Corporation and/or the Ahmedabad Municipal Corporation purchased the said property along with the rights of the plaintiffs to redeem the mortgage. It appears that there was a compromise purshis submitted by the plaintiffs and the defendant Nos.1 and 2 i.e. the original owners and the consent terms were produced at Exh.53.

On objections being given by the appellant herein, the learned trial Court held that the suit property continues to be subject to the mortgage in question. Consequently, while passing the judgment and decree, following order is passed :-

"The plaintiffs' suit is decreed in terms of compromise purshis Exh.53 subject to the clarification that in case after the payment of the plaintiffs' dues in terms of this decree any amount remains towards the sale proceeds of the suit immovable property the same shall be paid to the third defendant. The first defendant shall be at liberty to satisfy defendant No.3 with regard to the outstanding liability of the taxes and incidental charges and get reconveyed the suit immovable property, but that will be subject to this decree so far as the plaintiffs are concerned."

Being aggrieved with the same, the original defendant No.3 - Ahmedabad Municipal Corporation has preferred the present three appeals.

4. Shri Harin P. Raval, learned advocate appearing on behalf of the respondent Nos.1 to 6 has submitted that so far as the respondent No.1 - Prabhaven Hemendra Bhatt is concerned, she has died during the pendency of the appeals, however, her heirs are already on record and therefore, the estate is already represented by them. He has further submitted on instructions from the brother of the plaintiff No.1 - Prabhatben Hemendra Bhatt i.e. One Shri Kapilbhai M. Bhatt that during the pendency of the present appeals, so far as original plaintiffs are concerned, they have already received the mortgage money i.e. amount, which was claimed in the aforesaid suits from the original owners and therefore, it is submitted that so far as the dispute with regard to mortgage is concerned, the same will not survive.

5. In that view of the matter, the dispute and/or the main controversy that even on purchase of the properties by the Ahmedabad Municipal

Corporation, the mortgage continues has become academic. Under the circumstances, with the consent of the parties i.e. appellant herein - original defendant No.3 and the respondent Nos.2 to 6 - original plaintiffs, the judgment and decree passed by the learned trial Court in so far as the appellant - Ahmedabad Municipal Corporation is concerned, are hereby quashed and set aside. If the property in question is already purchased by the Ahmedabad Municipal Corporation for realization of the dues of the municipal tax and other charges than the mortgage in favour of the original plaintiffs will not come in the way of the appellant as the mortgage itself is not in existence.

6. With these, all the appeals are allowed to the aforesaid extent. The judgment and decrees passed by the learned City Civil Court, Ahmedabad, in Civil Suit Nos. 3693 of 1976, 3720 of 1976 and 3705 of 1976 are hereby quashed and set aside to the aforesaid extent in so far as the same were against the appellant herein is

concerned. No costs. Ad-interim relief, if any,
stands vacated forthwith.

[M.R.SHAH, J.]

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